IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1341 OF 2005
IN
ELECTION PETITION NO. 17 OF 2004
ALONG WITH
ELECTION PETITION NO.17 OF 2004

Shri Shyam Padaji Mhatre ...Petitioner.

V/s

Shri Vivekanand Shankar Patil ...Respondent.

Mr. S.G. Gavand for the petitioner.

Mr. G.S. Hiranandani for the respondent.

CORAM: V.M. KANADE, J.

DATE: 25th August, 2006.

ORAL ORDER:

1. This Chamber Summons is taken out by the respondent seeking the following reliefs:-

(a) That it be declared that the contents of paragraphs 9, 10, 12, 14, 15 and 16 of the present Election Petition do not make out a case that the Respondent has committed a corrupt practice as defined under the Representation of Peoples Act, 1951 and the same be directed to be struck off from the present election petition;

(b) for such other and further orders as this Honourable Court deems fit and proper in the facts and circumstances of the case.

2. It is contended by the learned Counsel appearing on behalf of the respondent that, in para 9, it is contended by the petitioner that the affidavit which is filed by the respondent does not disclose the correct assets which are owned by him and his wife. He has stated in the said paragraph number of assets which are owned by the respondent which have been suppressed by him and, therefore, there is a clear breach and non-disclosure of these assets. On the basis of these averments, the following grounds have been taken by the petitioner in the petition which is found in following paragraph:-

"18. The petitioner therefore on the basis of the facts and circumstances mentioned in the forgoing paragraphs, approaches this Hon'ble Court with a prayer that this Honourable Court may be pleased to call for the entire record and proceedings in respect of the Election of

the member to Maharashtra Legislative Assembly from 17 - Panvel Constituency and after perusal of the violation of the order dated 27th March 2003 issued by the Election Commission of India and illegalities and malpractices and corrupt practice committed by the return candidate i.e. the Respondent, Shri Vivekanand Shankar Patil in the said election, be pleased to declare that the said election is null and void and set aside the said election on the following amongst many other grounds which are pleased without prejudice to each other:

a) That an affidavit is evidence within the meaning of Section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury punishable under Section 193, IPC. The respondent herein, being legally bound by an oath to state the truth in his affidavit accompanying the nomination, has made false statement which constitutes an offence of giving false evidence as defined under section 191, IPC, punishable under Section 193, IPC and on this count alone the election of the return

candidate to Maharashtra Legislative Assembly for 17 - Panvel Maharashtra Legislative Assembly Constituency is liable to be quashed and set aside.

b) It is submitted that Right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation,misinformation, non-information all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce. In the present case the Respondent at first place canceled material information and true details about the property owned by him and the Respondent did not mentioned various landed property in is affidavit and at second place the Respondent suprress material information about loan obtained from the financial institutions.

c) That the right of a voter to know bio-data of a candidate is the foundation of democracy and it is the constitutional and lawful right

of voters that they should get the true and correct information about a candidate. It is submitted that filing false affidavit at the time of filing nomination for contesting the election should be treated as legal disqualification and hence the election of the respondent be quashed and set aside.

d) That the Respondent filed false affidavit along with his nomination and violated the order dated 27th March passed by the Election Commission of India. It is further submitted that considering this aspect it could be safely inferred that the nomination filed by the Respondent was not complete and lacked in material particulars and therefore the nomination of the Respondent was not legal and therefore his election from the 17 - Panvel Maharashtra Legislative Assembly constitutency is illegal and liable to be quahsed and set aside.

3. The learned Counsel appearing on behalf of the respondent submits that an election of a returned candidate can be set aside only on the grounds which

are mentioned in section 100 and section 123. It is submitted that the said ground which has been taken in the said paragraph does not constitute a disqualification under section 100 and 123 and, therefore, even if the petitioner proves this fact, the election of the respondent cannot be set aside on this ground. He, therefore, submitted that these averments and ground may be struck off from the petition. He invited my attention to the judgment of the Supreme Court in People's Union for Civil Liberties (PUCL) and Anr. Vs. Union of India (UOI) and Anr. reported in **AIR 2003 SC 2363** and also invited my attention to the observations of the Supreme Court on page 54 clause (d). He submitted that, therefore, in view of the observations of the Supreme Court, the said averments were liable to be struck off. He submitted that the Act was amended and section 33A, B and Section 75A and 125A were inserted. Section 33B was struck down by the Supreme Court as unconstitutional. He submitted that, however, the wrong disclosure of the information regarding the assets of candidate had been made punishable under section 125A but it has not been incorporated as disqualification either in section 100 or section 123 and, therefore, it was submitted that even if the petitioner proves this fact, the election of the

returned candidate cannot be set aside by this Court on that ground. He, thereafter, submitted that the second ground which is taken by the petitioner in this petition pertains to violation of Model Code of Conduct and the said averment is made in paras 10, 12, 14, 15 and 16 of the petition. It is submitted that though time to campaign was over, the respondent gave an interview to a cable operator which was telecast throughout the night one day before the election and, therefore, there was a breach of Model Code of Conduct. The learned Counsel for the respondent submitted that even a breach of Model Code of Conduct would not fall under the provisions of section 100 or 123 and, therefore, the said averment was liable to be struck off. He submitted that assuming that the respondent had made a statement as alleged by the petitioner, it was a reply given by him to the pamphlet which was published by the petitioner and it pertained to the discharge of the duties of the petitioner, not in his personal capacity but in the discharge of his public duties and, therefore, this would not be covered under section 123(4) as alleged by the petitioner.

4. On the other hand, the learned Counsel appearing on behalf of the petitioner submitted that on account

of wrong information which was given by the petitioner in his affidavit which was filed with the returning Officer regarding his assets, there was improper acceptance of nomination papers and, therefore, that would be one of the grounds for setting aside the election under section 100. He submitted that, therefore, he was entitled to lead evidence on this aspect which would prove that wrong information had been given by the returned candidate herein. He further submitted that so far as the averments in paras 10, 12, 14, 15 and 16 are concerned, the respondent had given an interview to the Cable Channel, making allegations against the petitioner. He submitted that there was evidence on record to indicate that the petitioner was not a Director of the Bank as alleged by the respondent and, therefore, the said allegation was on his personal character and not in discharge of his public duties. The learned Counsel conceded that violation of Model Code of Conduct would not amount to disqualification. He submitted that, however, that was the basis on which the ground under section 123(4) was sought to be made out. He submitted that, therefore, averments made in para 10 were essential as they were interconnected with the ground of breach of section 123(4) by the respondent. He relied upon the judgment of the

Supreme Court in the case of Sheopal Singh Vs. Ram Pratap reported in **AIR 1965 SC 677** in support of his submission.

5. I have given my anxious consideration to the submissions made by the learned Counsel for the petitioner and the learned Counsel for the respondent. I have perused the Chamber Summons, affidavit in support thereof and the affidavit-in-reply and the relevant paragraphs of the Election Petition.

6. So far as the submissions of the learned Counsel for the respondent are concerned in relation to deletion of paragraph 9 and the grounds which are raised in para 18 of the petition on the basis of these averments, in my view the said submissions will have to be accepted. The submission of the learned Counsel for the respondent is that the averments in the said paragraphs do not constitute a disqualification under section 100 or corrupt practice under section 123 of the Representation of the People Act, 1950 and, therefore, even if the said averments are accepted as true, on that basis election cannot be set aside and, secondly, that at the highest, it would amount to violation of Model Code of Conduct.

7. In this context, it will be relevant to consider the provisions of section 100 and 123 of the Act. The election of a returned candidate can be said aside only if it is established that the returned candidate is disqualified either under section 100 or has committed corrupt practice as laid down under section 123. The Representation of the People Act, 1950 was amended and the provisions of Sections 33A, 33B and Section 75A and 125A were inserted. Section 33B was struck down by the Supreme Court as unconstitutional in the case of People's Union for Civil Liberties (PUCL) and Anr. Vs. Union of India (UOI) and Anr., reported in AIR 2003 SC 2363. Sections 75 and 125A provide that any false information which is given by the candidate would be an offence punishable under the provisions of Section 125A. These provisions, therefore, indicate that non-disclosure of income or incorrect disclosure of income of the candidate can be an offence which is punishable under the Act but has not been treated as disqualification under section 100 or corrupt practice under section 123. This being the legal position, even if averments in the said paragraphs are accepted as true, on that basis the petitioner in the Election Petition cannot seek relief of setting aside the election of a returned candidate.

8. The Hon'ble Supreme Court also in the case of PUCL

(supra) has observed in para 81(D) as under:-

> "81(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to known the antecedents of a candidate, the directions given by this Court are against the statutory provisions are, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters fundamental right to know antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be

> little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures." [Emphasis supplied]

The aforesaid observation which has been made by the Hon'ble Supreme Court in the PUCL case (supra) where validity of section 33B of the amended Representation of the People Act, 1950 was challenged, clearly lays down that the validity of an election of a particular candidate would depend on statutory provisions and that the fundamental right of a voter is independent of statutory rights under the election law. Further, in the present case, non-disclosure of assets of the candidate is not treated as disqualification under section 100 or a corrupt practice under section 123.

9. The submission of the learned Counsel for the petitioner in the Election Petition that the non-disclosure of correct assets has resulted in improper acceptance of nomination paper and, therefore, it was a ground for setting aside the election under section 100 cannot be accepted.

10. It has to be noted that pursuant to the order dated

2/5/2002 of the Apex Court in the case of Union of India Vs. Association for Democratic Reforms and another in Civil Appeal No. 7178 of 2001, the Election Commission of India had issued an order dated 28th June, 2002 making it incumbent upon the candidate to file an affidavit mentioning five factual details in which included disclosure of assets. Thereafter, on 24/8/2002 by Ordinance No.4 of 2002 of the said Act, Section 33A, Sections 33B, 124A and Section 125A were amended.

11. The Apex Court in the case of PUCL (supra), upheld the validity of section 33A and declared section 33B as invalid, directing the Election Commission to amend the said order. In view of the said direction given by the Apex Court, earlier order dated 28th June, 2002 issued by the Election Commission stands amended in respect of the power of the Returning Officer to reject the nomination by holding suppression/incomplete disclosure as defect in the nomination. It must be pointed out here that pursuant to the said order of the Apex Court, the order of the Election Commission dated 28/6/2002 is accordingly amended. Further from the observations made by the Apex Court in the case of PUCL (supra), it is absolutely clear that the purpose of filing such affidavit regarding disclosure of information is for disseminating to public information about the candidate,

so that they could accordingly decide in whose favour the should cast their votes. That, this is an additional factor which indicates that this cannot become the subject matter of election. I am, therefore, of the view that the averments made in para 9 of the Election Petition and grounds which are taken on the basis of these averments in para 18(a), (b), (c), and (d) will have to be struck off.

12. The next contention of the learned Counsel appearing on behalf of the respondent is that the averments made in paragraphs 10, 12, 14, 15 and 16 do not make out a case that the respondent had committed corrupt practice as defined under the Representation of the People Act, 1951 and, therefore those paragraphs should be struck off from the Election Petition. The case of the petitioner is that the respondent has made a statement which was false in relation to the personal character or conduct of the petitioner. It is averred in para 10 of the Petition that the respondent has given an interview to a Cable network "Abhay Vision" which was against the Model Code of Conduct and, in the said interview, the respondent has made allegations in relation to the personal character and conduct of the petitioner which were false to the knowledge of the respondent and that the petitioner had applied to the

returning Officer for filing written complaint and had requested him to seize the tape of the said interview. It is submitted by the learned Counsel for the respondent that the said averments made in paragraphs 10 to 16 do not constitute a ground for setting aside the election as laid down under section 100 or section 123 of the Representation of the People Act. It is submitted that a perusal of the averments in the said paragraphs clearly show that the nature of accusations made against the petitioner by the respondent is not in relation to the personal character and conduct of the petitioner.

13. The learned Counsel appearing on behalf of the petitioner, on the other hand, submitted that the averments in the said paragraph are not pertaining to violation of Model Code of Conduct alone but are averments regarding corrupt practice committed by the respondent as laid down under the provisions of section 123(4) of the Representation of the People Act, which is one of the grounds for setting aside election under section 100 of the said Act. He submitted that the said accusations were false accusations made by the respondent in relation to the petitioner's personal character and conduct and this had caused grave prejudice to the prospects of election of the

petitioner. It is submitted that the petitioner was entitled to lead evidence on the basis of these averments for the purpose of establishing his case. It is submitted that the Chamber Summons is, therefore liable to be dismissed.

14. Before considering the rival contentions, it is necessary to examine nature of averments which are made in the petition in the said paragraphs. In para 10 it is stated that a book was published by Mr. G.R. Patil on behalf of Indian National Congress Party under the title "Paha Aani Vichar Kara" i.e. "see and think". It is averred in the said paragraph that certain objections were raised against the respondent and for the purpose of giving reply to the said objections, the respondent gave an interview and it was telecast on the Cable network "Abhay Vision". It is stated that the polling was held on 13/10/2004 from 7.30 a.m. to 5.30 p.m. and, therefore, the campaigning stopped 48 hours before the date of the election i.e. from 11/10/2004. It is averred that in spite of this prohibition, interview of the respondent was telecast on the said network from 1.00 p.m. on 12/10/2004 and continued till early morning on 13/10/2004. It is stated that it was the duty of the respondent to ensure that the said interview was not telecast in violation of the Model Code of

Conduct set out by the Election Commission. It is contended that the Model Code of Conduct was violated with an intention to secure more votes by campaigning till the last minute of voting. In para 11, it is averred that the petitioner by letter dated 15/10/2004 pointed out the aforesaid facts to the Returning Officer and requested him to seize the said tape in respect of the interview given by the respondent. In para 12, it is averred that the said interview which was given by the respondent was widely telecast in the entire Panvel Constituency and it was stated in the said interview that out of 500 acres of land owned by his grandfather, 20 acres land came to his share. It is further averred that the respondent had not stated in the affidavit which he had filed about this 20 acres of land as to where it was situated and what was the condition of the land. Further, no details or description of the land was given in the affidavit filed by the respondent before the Returning Officer and, therefore, this has amounted to sppresion of material fact and violation of the order passed by the Election Commission of India.

15. Even if the said averments are accepted as true, at the highest, it would amount to violation of the Code of Conduct by a candidate. However, violation of Code of Conduct cannot be said to be a disqualification as laid

down under section 100 or also does not amount to a corrupt practice as laid down under section 123 of the said Act and, therefore, on that count, the election of a returned candidate cannot be set aside. The ratio of the judgment in PUCL case (supra) will squarely apply to the facts of the present case and, therefore, the said averments do not constitute a ground for the purpose of setting aside the election of the respondent.

16. Petitioner in para 13 of the petition has further stated that the election of the respondent is liable to be quashed on the ground of corrupt practice committed by the respondent within the meaning of section 123(4) of the said Act. It is further averred that the respondent is guilty of making/publishing false allegations against the petitioner in relation to his personal character and conduct in an interview referred to in para 10 of the petition. It is alleged that the respondent knowingly has made false allegations against the petitioner. In para 14 it is stated that in an interview which was given by the respondent, he has stated as under:-

> "Today Shyam Mhatre is their candidate. We run the Karnala Bank. We run so many societies. By means of these societies, by keeping high aims

> and objects, we work for the same. Their Shyam Mhatre came and started a Co-operative Credit Society at Sukapur Colony. The said Co-Operative Credit Society was ruined. Today there is no name of the said Co-Operative Credit Society. There shares taken by the peoples, however, there is no money. Deposits were taken from people, which were siphoned and now he do not go to Sukapur Colony to show his face".

It is further averred that the petitioner was not concerned in any way with the said Co-operative Credit Society and, therefore, the said statement which was made by the respondent in an interview was palpably false and, therefore, on this ground alone, the respondent's election was liable to be set aside.

17. In paragraph 15 of the Petition, the petitioner has further averred that following false allegations were made against him:-

> "If at all allegations are to be made then what are the activities committed by Mr. Shyam Mhatre? We have all the information about how much amount is given for the stalls situated in Khanda Colony. Given to whom? Given to how

> many natives? If have guts then call them here on our channel and they should publish a list that amongst (stalls given at Khanda Colony), how many are the project affected and how many are the outsiders. He should give information about it. These false protesters have sold the stalls situated at Khanda Colony, made for project-affected persons to the outsiders by straightly taking money illegally. We are not against the outsiders. We truly object to that, 'on the one hand agitations are made in the name of project affected persons and it is told that what we are doing project affected persons and (on the other hand) stalls, which are made for project affected persons are sold to outsiders by taking amount illegally".

It is stated in the said paragraph further that the said allegation is false and the petitioner was not concerned with the activities of the other three societies and that the plot was given to the Khandeshwari Pheriwala Sangh of the petitioner on rental basis and, therefore, question of selling these stalls to anybody did not arise. It is, therefore, stated that the said allegation which was made by the respondent was false to his knowledge.

18. In para 16 of the petition, it is stated that the respondent has made a false statement regarding character and conduct of the petitioner. The said statement which is quoted in para 16, reads as under:-

> "Mr. Shyam Mhatre should also give reply as to why an amount of Rs.60/- per month is being collected from the hawkers in Khanda Colony. We also run Unions. The fee of any union is Rupees 5/-. The monthly membership fee of union is not Rs 60/- or Rs 100/-. what he do by taking this fee. The next important question when the ticket was asked from NCP and when the observers of NCP came to Panvel at that time Shyam Mhatre told openly on mike that he will spend an amount of Rs 2 cores. First D.B. Patil should publish a book like it and should tell that how man having a salary of Rs 17,000/- brings an amount of Rs 2 cores for election."

It is stated that the petitioner neither collected in person an amount of Rs 60/- or Rs 100/- as the monthly membership fee and that the petitioner was a President of the Khandeshwari Pheriwala Sangh and responsibility of collecting membership fee was on the Secretary and

Treasurer and that he, at no point of time, had made any statement that he would spend an amount of Rs 2 crores.

19. It has, therefore, to be examined whether the averments made in the said paragraph constitutes a corrupt practice as laid down under section 123(4). Before deciding the said question, it would be relevant to consider the provisions of section 123(4) which read as under:-

> "123. Corrupt practices.- The following shall be deemed to be corrupt practices for the purposes of this Act:-
>
> (1).....
>
> (2).....
>
> (3).....
>
> (4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of

any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

20. A perusal of the aforesaid provision clearly discloses that what is prohibited by the statute is making of false imputation which is made against the personal character and conduct of the contesting candidate by the returned candidate or by his election agent or agents. It has to be noted that the emphasis which is given by the said section is on the personal character and conduct and which is false to the knowledge of the returned candidate. This clearly discloses that what is prohibited by the Act is not a debate regarding the conduct of a candidate as far as his public life is concerned because in a democratic set up elections are fought on the basis of the action of a candidate in his public life and, therefore, it is always open for a rival candidate to demonstrate the failure of his opponent or his inability to fulfil the promises given by him or to show his inaction in public life. Such a criticism is not prohibited by the provisions of section 123(4). This distinction has been considered by the Supreme Court in the case of Sheopal Singh Vs. Ram Pratap reported in **AIR 1965 SC 677.** In para 8 of the said judgment the Supreme Court has

observed as under:-

> "8. The boundary between personal character and conduct and public character and conduct is well drawn, though, sometimes, it is thin. Sometimes a statement may appear to touch both the candidate's personal as well as public character. But a deeper scrutiny enables a court to ascertain whether there is a reflection on his personal character or on his public character. To illustrate : suppose a statement is made to the effect that a minister has taken a bribe in making an appointment or in giving a contract. He has taken the bribe in the course of discharging his duties as a minister, but his act of taking bribe does not solely reflect on his public character. By taking a bribe he does not discharge his official duties; taking a bribe has nothing to do with his official or public duty. It reflects on his moral and mental fibre. His position as a minister may have given him the opportunity to take a bribe but the taking of the bribe is mainly attributable to his deficiency in personal character. We, therefore, hold that any statement made, which reflects on the mental or

> moral character of a person is a reflection on his personal character, whereas any criticism of a person's political or public activities and policies is outside it. The fact such a statement is made in the course of a political or public activity does not make it any the less a statement in relation to his personal character or conduct. It is a question of fact in each case under what category a particular statement falls."

In the context of the provisions of section 123(4) and the ratio of the judgment of the Supreme Court in the case of Sheopal Singh (supra), it will have to be examined whether the averments made by the petitioner in the Election Petition in the aforesaid paragraphs, constitute a corrupt practice within the meaning of section 123(4) of the said Act.

21. In my view, it cannot be said that the said averments constitute a corrupt practice within the meaning of section 123(4) of the said Act. In para 13, the petitioner has merely averred that corrupt practice has been committed by the respondent within the meaning of section 123(4). In para 14, a statement made by the respondent is quoted against which an exception is taken

by the petitioner. In the said statement, it appears that the respondent has stated that the petitioner started a Co-Operative Credit Society at Sukapur Colony. However, the said Credit Society was ruined and that there was no name of the said Co-Operative Credit Society and that the petitioner does not go to the Sukapur Colony to show his face. This averment clearly discloses that the criticism was in respect of the actions of the petitioner not in his personal capacity but in his private capacity. Even if the said averment is accepted as true, it would not constitute a corrupt practice within the meaning of section 123(4) which does not prohibit the criticism of a rival candidate in respect of his actions taken in public life. Thereafter, in para 15 allegations which are made also, in my view, are clearly in respect of the actions of the petitioner as a President of Khandeshwari Pheriwala Sangh. Petitioner has admitted that he is the President of the said Khandeshwari Pheriwala Sangh in the said paragraph. In the said statement which is reproduced in para 15, the respondent has questioned the actions of the petitioner. Even otherwise, a perusal of the said statement discloses that no direct allegations are made against the petitioner. It appears to be reply given by the respondent to the objections which are raised by the petitioner's party in public and, while doing so, he has

posed certain questions to the public at large. This, in my view, does not constitute a corrupt practice under the provisions of section 123(4) even if the said statement is accepted on its face value.

22. Lastly, in the said statement which is reproduced in para 16 of the petition, the question is posed to the petitioner as to why the amount of Rs 60/- per month was collected from the hawkers in Khanda Colony. It is stated that the petitioner also runs Unions and fee of any Union is Rs 5/- and it is not Rs 60/- or Rs 100/-. It is also stated that when the observers of NCP came to Panvel, petitioner had openly stated in the said meeting that he would spend an amount of Rs 2 crores and, therefore, a question was posed that D.B. Patil who had published a book "Paha Aani Vichar Kara" should inform as to how a person having a salary of Rs 17,000/- would bring an amount of Rs 2 crores. Petitioner has not denied that he is a President of Khandeshwari Pheriwala Sangh. In the said paragraph 16, he has stated that the responsibility of collecting membership fee is on the Secretary and Treasurer and further the said statement regarding spending of Rs 2 crores has been denied by him. Such a statement, in my view, would never constitute a corrupt practice under section 123. If such extended meaning is given to the provisions of section

123(4), it would not be possible for any candidate to say anything against his rival candidate. Such was never the intention of the legislature in incorporating the provisions of section 123(4).

23. Therefore, even if the averments in the said paragraphs viz. paragraphs 10 to 16 are taken on their face value, on that ground the election of the respondent cannot be set aside. The averments in these paragraphs, therefore, do not constitute a cause of action against the respondent for the purpose of filing Election Petition and, therefore, the said averments are liable to be struck off. None of the averments, therefore, is sufficient to proceed against the respondent for the purpose of setting aside the election of the returned candidate and, as such, there is no other alternative but to dismiss the election petition.

24. In the result, Chamber Summons is allowed. Averments in paragraphs 9, 10 to 16 are struck off. No case is therefore made out by the petitioner to proceed against the respondent under the provisions of the Representation of the People Act, 1950. Election Petition is, therefore, liable to be dismissed. Election Petition is dismissed. Under the circumstances, there shall be no order as to costs.

V. M. KANADE, J.